end of the course, until the student can bring to bear on its complexities his knowledge gathered in the course on the use and function of the various types of paper: in payment, in exchange, in short term and long term finance, in collateral notes designed primarily for maximum security to a single holder and in notes and acceptances looking primarily to ready marketability.

It would be idle to expect that Professor Moore would fully agree with the writer in all or many of the heterodox views expressed above as to the arrangement or even as to the material for an ideal casebook, even where such views derive largely from suggestions which he has himself from time to time thrown out. He does, however, agree that the current approach to bills and notes needs reworking; and it is good to know that his chief reason for not more radically remodelling the arrangement and contents of this second edition is that he is already at work on a book which will develop the material according to his present views. Not only the arrangement and the case selection in that book, but the notes, will be of extreme interest and value. Nor should one omit the hope that he will not confine his treatment to the decided cases, but will present, at least in problem form, a wide range of the moot or nearly moot questions in commercial paper which common business practice is raising for future litigation: certification of checks payable "through the Clearing House only"; dividend checks made payable at any of several banks in different cities; bond houses' interim certificates; recovery of money paid on traveller's checks over a forged countersignature; the effect on obligors in this country of transfer over a forged indorsement in a country where such transfer conveys good title; the misty ramifications of indirect drawing under protection; seals on notes; the effect of transfer of a draft drawn against bill of lading as a transfer of the seller's right to the price—for surely the student of a commercial field in vigorous growth should not go out wholly ignorant of the sprouting, in some cases flourishing. shoots about him.

In a word: the present volume is an excellent tool, the best available, for teaching what we know, as to the law and theory of the subject; but to the coming volume we look for new light on both.

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THE PROBLEM OF PROOF, ESPECIALLY AS EXEMPLIFIED IN DISPUTED DOCUMENT TRIALS.—A Discussion of Various Phases of the Proof of the Facts in a Court of Law, with Some General Comments on the Conduct of Trials. By ALBERT S. OSBORN. New York and Albany: MATTHEW BENDER & Co., INC. 1922. pp. xxi, 526.

While this book deals with the problem of proof primarily in disputed document trials, it is a book that discusses so many of the general problems of the preparation and trial of cases that it ought to be read by every lawyer.

In the technical subject in which the author is a specialist—proof of the authenticity or forgery of questioned documents—the book is full of interest and suggestiveness. The vital point which the author emphasizes throughout his treatment of this subject is that the chief contribution which the handwriting expert makes to the testimony in a cause consists in the physical facts which he is able to bring before the jury as to the characteristics of the handwriting in question, and that these facts give to his opinion a value which it can never possess if they are excluded. It is his facts, and his reasoning from those facts which give to the expert's opinion all its force. Indeed, the most important function of such an expert is that he makes the jury see a concatenation

of details which the jurors themselves for lack of training would never observe. The author himself says:

"With expert testimony where only bare opinions are given, the credulity of the hearer is what is appealed to; if the hearer believes, then the testimony is given credit. If, however, certain facts and circumstances are admitted or proved, then the facts themselves are the witnesses" (p. 209).

Again: "A bungling, overwritten, traced signature, as well as a coat with a bullet hole in the breast, are both known as 'real' evidence. These are the 'silent circumstances' that do not commit perjury. Though silent they are often eloquent. To learn their story is the vital part of many trials at law" (p. 208).

The chapter on disputed typewriting problems (p. 264) contains striking illustrations of how apparently trifling characteristics in a typewritten document may prove that it was a forgery, as by showing that the particular type of machine on which it was written did not come into existence until after the alleged date of the document itself. The author clearly shows in this chapter the possibility of certainty of proof in many cases, as to the genuineness of typewritten documents—a field where the problem at first blush might seem hopeless of solution.

Excellent as is the author's treatment of the technical problem of proof relating to questioned documents, the greatest value of the book lies in its remarkable contribution to the subject of preparation of cases and their trial. A lawyer who may never have a questioned document come before him will yet reap a rich reward from reading this book. The reason is that the thorough study of one branch of the topic of proof has led the author to think profoundly over the whole subject of the preparation of testimony and the conduct of trials.

The late Walter Bagehot has said of a great poet, that his works "could only be produced by a first-rate imagination working on a first-rate experience."[1] He adds: "To a great experience one thing is essential, an experiencing nature. It is not enough to have opportunity, it is essential to feel it."[2] Mr. Osborn's book is a work of practical insight rather than imagination, but it is the product of a first-rate insight working on a first-rate experience. It is rarely indeed that a law book bears so clear an impression of being such a product. The remarkable chapters on "Cross Examination," "Advocacy" and "Persuasion and Practical Psychology in Courts of Law," are filled with observations which need to be brought home to every lawyer.

A few instances: "The advocate is in duty bound to protect the interests of his client in every proper way, but for a fee he is not called upon to sell his own soul" (p. 231). "Notwithstanding the opportunities for practice and observation, cross-examination is that part of law practice which is most unskillful and ineffective. In too many instances the attempt is made to make up for lack of ability by violating common courtesy and by an unnatural emphasis which in effect is little more than an increase in noise" (p. 152). "Undue emphasis on the spirit of advocacy leads an entirely conscientious attorney to overload his case with evidence, to over-try it in every way, and to over-emphasize everything that he presents or discusses. . . . The most trivial point is argued with the same intensity that is given to the vital issue in the case, and as a result nothing is emphasized because everything is emphasized" (p. 230).

Of such vital truths as these, said in a vital way, the book is full.

The author justly condemns the abuse of expert testimony that is made by hiring corrupt experts, and he places the blame for this practice where it belongs,—on the class of lawyers who employ such experts. The author says concerning the attorney of this type:

"There is no good reason why he should be condemned for hiring an ordi-

[1] 1 Bagehot, *Literary Studies* 112 (Everyman's Library 1900). [2] *Ibid.*, p. 113.

nary corrupt witness and should not be criticized for deliberately hiring a corrupt expert. . . . A man who knowingly and habitually uses perjury is not very different from a perjurer" (p. 330).

It is not often that we can say of a law book that it unites technical excellence with broad human interest. Such a book Mr. Osborn has produced. He has done this because he is a man who combines in a rare degree the powers of observation and reflection. He is both an observer and a student. Of the importance of the spirit of study, he himself says:

"One of the greatest differences in workers in all fields is the degree of their inspiration by the student spirit, that attitude of mind that makes practical life a constant course of study. The education of men of this latter class is only finished when life is finished" (p. 232).

The author himself is clearly a man of this type. Not every man of the student spirit, however, possesses the remarkable power of insight which this volume reveals on every page. The author sees as well as thinks; and it is the keenness of his vision which gives wisdom to his reflection. He is endowed with "an experiencing nature."

In the excellent bibliography attached to his book, the author makes this remark:

"Influenced as he is by the conditions that surround him, the professional man is inclined to be a narrow man. The truth is that in many cases his general mental development stops when his practice begins, and of all men he is in special need of intellectual stimulus outside of his narrow technical field" (p. 492).

The wide range of reading of the author is revealed in the list of books in the bibliography. We believe that few of these books—and some of them are famous volumes—can be read by the lawyer with a greater sense of sustained interest and of mental enlargement than Mr. Osborn's work on "The Problem of Proof."

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AN INTRODUCTION TO THE PHILOSOPHY OF LAW. By ROSCOE POUND. New Haven: YALE UNIVERSITY PRESS. 1922. pp. 307.

It is fortunate that the first American book to dare to put *philosophy of law* in its title, is written by one who has not only been our foremost legal scholar but has also had experience at the bar and on the bench. The prestige of the latter is needed to overcome the deep prejudice of the "practically" minded against any avowedly theoretical treatment of the law. This prejudice is not altogether baseless. The vagaries of transcendental philosophers have been as inapt in the law as in the natural sciences. But bad metaphysics cannot be avoided by ignoring philosophy and burying our heads in the sands after the manner of the ostrich—witness the ultra "practical" lawyers who involve themselves in metaphysical quagmires by speaking of *mens rea,* or the "meeting of minds" in contract, or "the will of the legislator" in circumstances which no legislator could have foreseen. These confusions are not of merely intellectual interest—they are decisive of the way in which the law is to meet the human needs which it ought to serve. Thus the metaphysical theories of natural rights and free-will have led courts to nullify legislative efforts to protect otherwise helpless workmen against the economic oppression of company stores, payment in truck, etc.

Because of the need for the recognition of the essentially practical character